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L & L Wings, Inc.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

L & L WINGS, INC.,

Plaintiff and Counterclaim Defendant,

-against-

MARCO-DESTIN INC., 1000 HIGHWAY
98 EAST CORP., PANAMA SURF &
SPORT, INC. AND E & T INC.,

Defendants and Counterclaim Plaintiffs.

ECF Case

Civil Action No. CV-07-4137
(BSJ) (GWG)

**DECLARATION OF ALBERT LEVY IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

ALBERT LEVY declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the General Manager of Plaintiff L & L Wings, Inc. ("Plaintiff"), and I make this Declaration in support of Plaintiff's Motion for Partial Summary Judgment. The statements set forth herein are based on my personal knowledge.

2. Plaintiff maintains its website at wingsbeachwear.com. Anyone with access to the Internet may use a search engine and search for, *e.g.*, “wings stores” or “wings at the beach” to find Plaintiff’s website.

3. Customers can use Plaintiff’s website to send communications to Plaintiff. For example, customer service e-mails are received through Plaintiff’s website.

4. Plaintiff segregates and retains customers’ negative feedback and comments, received through its website, about “Wings” stores owned and operated by Defendants.

5. Recognition of the Mark is evidenced by numerous positive comments from satisfied customers directed to Plaintiff’s customer service department. Annexed hereto as Exhibit A is a collection of customer service e-mails received by Plaintiff through its website that reflect such positive feedback regarding Plaintiff’s “Wings” stores. These e-mails were printed at my direction.

6. There have also been numerous instances in which dissatisfied customers of Defendants’ “Wings” stores have contacted Plaintiff to complain, mistakenly believing the offending stores to be owned by Plaintiff. These customers have complained to Plaintiff about such things as employee theft, rude employees, refusal to accept returns of defective merchandise, mistreatment of hermit crabs, unpleasant odors resulting from dead hermit crabs left on display, and poor quality of merchandise and services. Annexed hereto as Exhibit B is a collection of customer service e-mails, dated after the October 31, 2006 termination date of Defendants’ license under the parties’ Licensing Agreement and received by Plaintiff through its website, that reflect negative comments about Defendants’ stores, services and products. These communications make clear that consumers mistakenly believe Defendants’ “Wings” stores are owned by Plaintiff. These e-mails were printed at my direction.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 3, 2008.



Albert Levy